

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)	
)	
Gray Television Licensee, LLC)	CSR-8759-N
WTAP-TV (Fac. ID No. 4685))	Docket No. 13-16
WIYE-LD (Fac. ID No. 130392))	
WOVA-LD (Fac. ID No. 125125))	
Parkersburg, West Virginia)	
)	
Petition for Waiver of §§ 76.92(f) & 76.106(a))	
of the Commission's Rules)	
To: Office of the Secretary		
Attn: Chief, Media Bureau		

**OPPOSITION TO PETITION FOR WAIVER OF
SECTIONS 76.92(f) AND 76.106(a) OF THE COMMISSION'S RULES**

Cequel Communications, LLC d/b/a Suddenlink Communications ("Suddenlink" or the "Company"), by its attorneys, hereby opposes the above-referenced Petition submitted by Gray Television Licensee, LLC ("Gray"), licensee of WTAP-TV, WIYE-LD, and WOVA-LD, Parkersburg, West Virginia (the "Stations") in the above-captioned proceeding. Petitioner contends that CBS affiliate WOWK-TV (Huntington, WV) and Fox affiliate WVAH-TV (Charleston, WV) should be subject to network non-duplication and syndicated exclusivity black-outs on cable systems in Parkersburg, West Virginia, notwithstanding these stations' long-time inclusion in the Commission's official list of "significantly viewed" stations for Wood County, West Virginia, where Parkersburg is located.

Suddenlink, which provides cable service to Parkersburg, supports the arguments already set forth in the opposition (“Opposition”) submitted by West Virginia Media Holdings, LLC (“Media Holdings”), licensee of WOWK-TV, in the above-referenced docket.¹ The Media Holdings Opposition correctly concludes that there is no basis for the Commission to grant the requested waiver, because it would *not* actually have the intended impact on Parkersburg customers. Accordingly, the Petition should be summarily dismissed. Media Holdings also correctly concludes that, even if the Commission were inclined to consider the merits of the Petition, the very limited data presented in this case does not justify any adjustment to the either WOWK-TV’s or WVAH-TV’s “significantly viewed” status.²

I. THE COMMISSION’S RULES WOULD NOT REQUIRE A NETWORK NON-DUPLICATION BLACKOUT OF EITHER WOWK-TV OR WVAH-TV IN PARKERSBURG.

As Media Holdings Opposition correctly points out, it is well established that LPTV stations do *not* have network non-duplication or syndicated exclusivity rights.³ Indeed, in *Storefront*, the Commission leaves no doubt whatsoever that neither the Communications Act nor the Commission’s rules “provide low power television stations the authority to exercise network non-duplication rights.”⁴ In this case, low power television station WIYE-LD is the affiliate named in the Gray-CBS affiliation agreement, and WIYE-LD currently broadcasts CBS

¹ See “Opposition” submitted by West Virginia Media Holdings, LLC (February 11, 2013). Suddenlink also supports the arguments set forth in the “Opposition to Petition for Special Relief” submitted by WVAH License, LLC, licensee of WVAH-TV, Charleston, West Virginia on February 11, 2013 in this proceeding.

² In addition to providing cable service to Parkersburg, Suddenlink serves several surrounding communities. The requested waiver is particularly troubling in this case, because it is supported by only a very small sample from Zip codes associated with a single community, which in practice will affect communities not even sampled.

³ See Opposition at 5-6, *citing Storefront Television v. Last Mile Communications, LLC*, 21 FCC Rcd 9929 (2009) (“*Storefront*”).

⁴ *Id.* at ¶ 3.

network programming.⁵ Similarly, Gray claims that it has an affiliation agreement with Fox authorizing carriage of Fox network programming on WOVA-LD,⁶ and WOVA-LD currently broadcasts Fox network programming.

The Petition states that a waiver of the long-standing significantly viewed exception is necessary “so that Gray may enforce its network nonduplication and syndicated program exclusivity rights in its Parkersburg stations’ local community with respect to the duplicative programming of WOWK-TV and WVAH-TV.”⁷ But, the waiver will not allow the enforcement Gray claims, because LPTV stations WIYE-LD and WVOA-LD still will not be entitled to invoke exclusivity protection. Like Media Holdings, Suddenlink believes the Commission should dismiss the Petition, because clearly neither WIYE-LD (CBS) nor WVOA-LD (Fox) is entitled to any such exclusivity rights. The Commission should not be burdened with a “significantly viewed” analysis where, as in this case, the requested waiver would not accomplish the carriage relief Petitioner seeks.

II. THE COMMISSION’S RULES WOULD NOT REQUIRE A SYNDICATED EXCLUSIVITY BLACKOUT OF EITHER WOWK-TV OR WVAH-TV IN PARKERSBURG.

As the Commission is aware, not every “out-of-market” station is subject to signal carriage blackouts, and the “significantly viewed” exception (which the Petition focuses upon

⁵ See Opposition at 5-6. See also Petition at 1, n. 1.

⁶ See Petition at 1, n. 1. As noted above, Media Holdings demonstrates that WIYE-LD is the affiliate named in the Gray-CBS affiliation agreement. The Opposition goes on to explain that Gray cannot claim non-duplication or syndicated exclusivity rights for WTAP-TV, because there is no language in the Gray-CBS agreement conferring such rights on the digital multiplex channel. See Opposition at 5-6. In light of this revelation, and given that WOVA-LD (not WTAP-TV) is currently broadcasting Fox network programming, the same situation may exist with regard to Fox network programming. Gray should be required to provide the relevant language in the current Gray-Fox agreements to verify the network affiliation and duplication rights with respect to WOVA-LD and WTAP-TV.

⁷ Petition at 2.

exclusively) is not the only potential exemption. As noted in the Media Holdings Opposition, the rules expressly establish several “exceptions” to syndicated exclusivity blackouts.⁸ Section 76.106(a) states that “a broadcast signal is not required to be deleted from a cable community unit when that cable community falls, in whole or in part, within that signal’s grade B contour...”⁹ Since the digital transition on June 12, 2009, the Commission has accepted a digital station’s “noise-limited” service contour as the functional equivalent of an analog station’s Grade B contour.¹⁰ As Media Holdings explains in its Opposition, the noise-limited service contour of WOWK-TV overlaps Parkersburg.¹¹ The noise-limited service contour of WVAH-TV also easily overlaps the community of Parkersburg.¹² Thus, the Commission’s rules would not require a syndicated exclusivity blackout of either of these stations, even if the Petition were granted.

III. PETITIONER’S RATINGS EVIDENCE IS INADEQUATE TO JUSTIFY THE REQUESTED RELIEF.

Suddenlink, like Media Holdings, believes that the Nielsen Study underlying the Petition is flawed and otherwise fails to support the requested waiver. Nielsen concedes that it did not conduct a new study specifically for this purpose, but instead tried to retrofit existing data gathered for a very different purpose. As a result, Nielsen relied on a sample that is far too small to justify the requested Commission action. Nielsen considered a total of just 10 diaries from

⁸ See Opposition at 6-7.

⁹ 47 C.F.R. § 76.106(a).

¹⁰ See, e.g., *Tennessee Broadcasting Partners For Modification of the Television Market for WBBJ-TV, Jackson, Tennessee*, 25 FCC Rcd. 4857, ¶ 6 (2010); *Commonwealth Broadcasting Group, Inc.*, 25 FCC Rcd. 213, ¶ 7 (2010).

¹¹ See Opposition at 6-7. See also Exhibit 1 (including a maps available at the FCC’s website, <http://www.fcc.gov/encyclopedia/tv-query-broadcast-station-search>, which show both WOWK-TV’s and WVAH-TV’s noise-limited service contours overlapping Parkersburg.).

¹² See Exhibit 1.

February 2011 and May 2011, and a combination of just 7 diaries from February 2012 and May 2012. Common sense suggests that this is a woefully inadequate sample for the Commission to rely upon in reversing carriage status that has existed for decades with respect to both WWOK-TV and WVAH-TV. Given the very small sample size at issue here, the viewing preferences of a single person could dramatically impact the reported results.

The existing Commission regulations do not directly address waiver requirements for cases of this sort. As Petitioner notes, there are cases suggesting reliance on Section 76.54 is appropriate,¹³ and that rule admittedly attempts to address sampling variations by requiring a margin of “one standard error.” The Commission must recognize, however, that a standard error calculation cannot entirely compensate for or ensure the reliability of an extraordinarily small sample, as is the case here. Indeed, the Commission should not simply assume that a standard error computation necessarily resolves any reliability concerns based on sample size. At this point, before the Commission grants a petition that could disrupt long-established viewing based on statistical evidence, it should require the petitioner to affirmatively demonstrate, with detailed support from a statistical expert other than the entity undertaking the survey, that the survey evidence submitted is statistically reliable and not undermined by the survey size.

Additionally, as Media Holdings explains in its Opposition, the fact that Gray presents *combined* diaries for WWOK-TV and WVAH-TV for the periods in 2011 and 2012 makes it impossible to determine whether there was at least one respondent during each individual period.¹⁴ Media Holding cites to case law, in which the Commission has found that surveys consisting of zero diaries for any one of the survey periods is unacceptable for purposes of

¹³ See 47 U.S.C. § 76.54.

¹⁴ See Opposition at 8-9.

waiving the significantly viewed exception.¹⁵ Suddenlink agrees with Media Holdings that Gray has failed to demonstrate that its data is statistically valid.

CONCLUSION

Given the deficiencies and limitations in Petitioner's supporting data, and the critical fact that the Petition (even if granted) would not produce the carriage relief Petitioner seeks, the Commission should reject the Petition.

Respectfully submitted,

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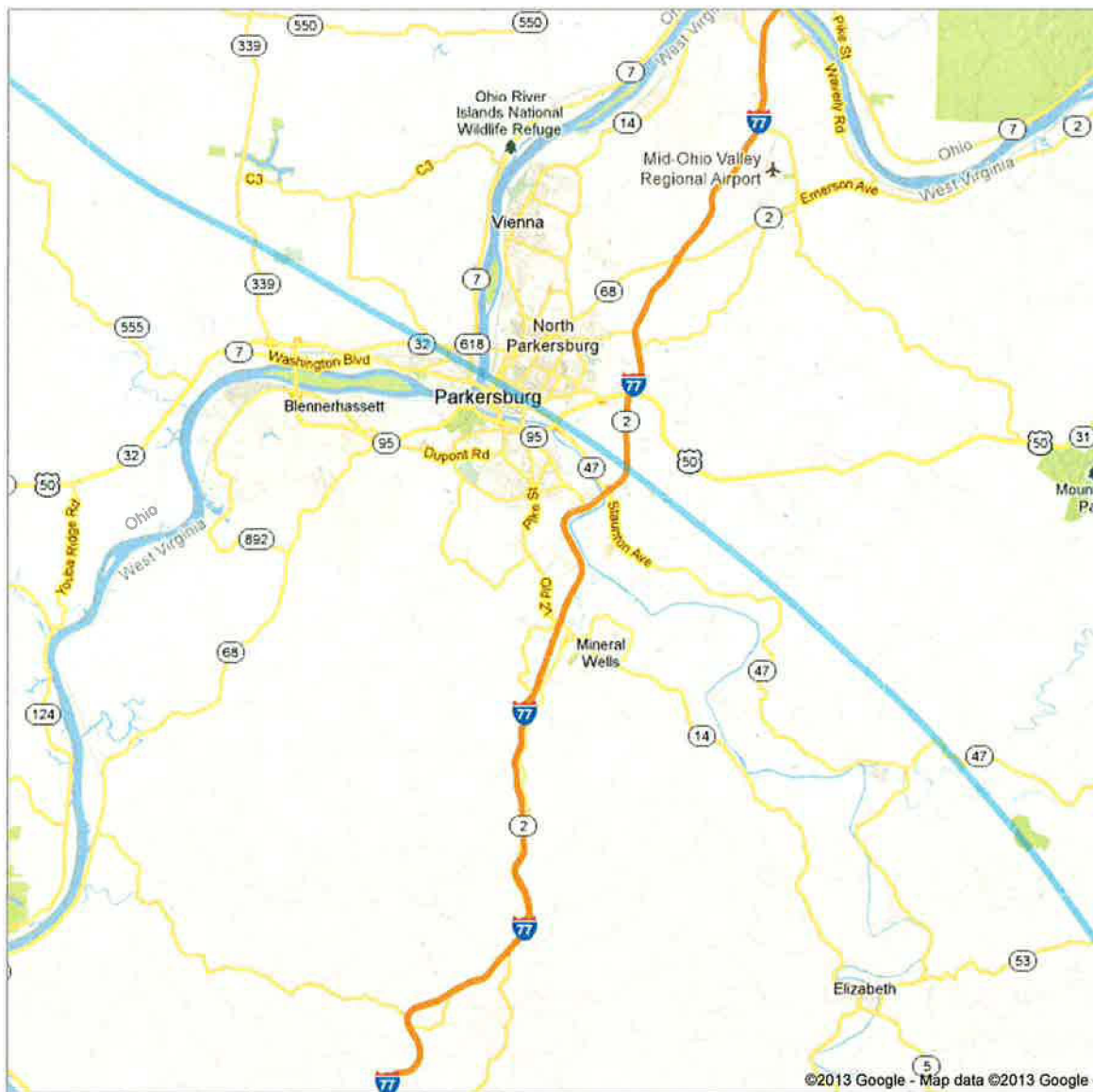
¹⁵ See *id.*, citing *WTNH Broadcasting, Inc.*, 27 FCC Rcd. 15895, ¶ 9 (2012); *Saga Quad States Communications, LLC*, 7 FCC Rcd. 14859 (2012) (“[I]f there are no in-tab households for one of the survey periods, then the process of combining surveys is contrary to our intent because the individual survey adds nothing, and the claimed average is solely the result of one survey period.”).

EXHIBIT 1



Get Google Maps on your phone

Text the word "GMAPS" to 466453

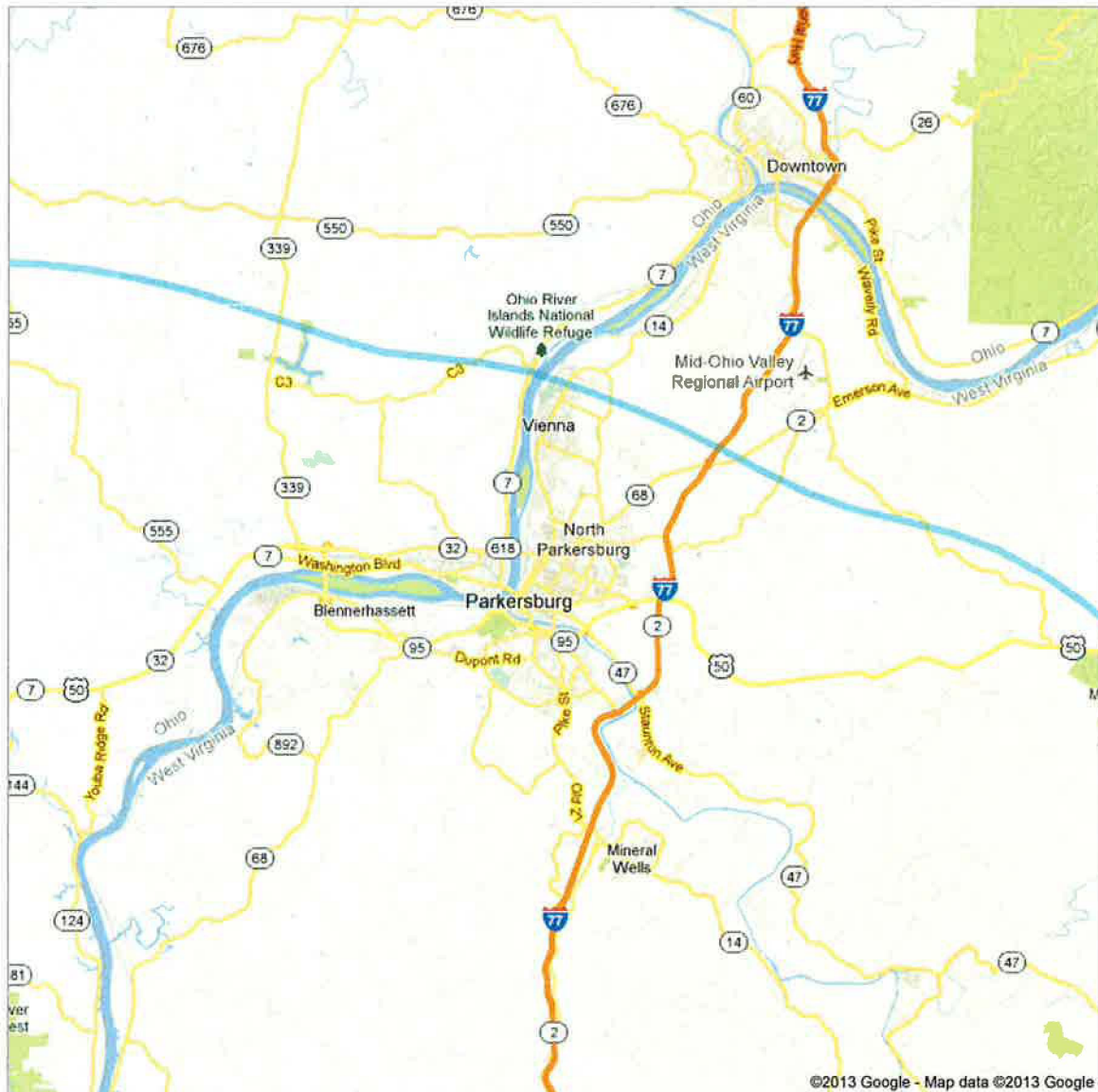
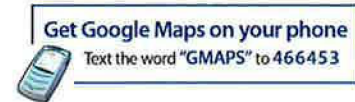


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36 dBu Service Contour for WOWK-TV, Huntington, WV

- ☒ **WOWK-TV, Huntington, WV**
FCC File No. BLCDT-20090227ABU
- ☒ **36 dBu Service contour**



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41 dBu Service Contour for WVAH-TV, Charleston, WV



WVAH-TV, Charleston, WV

FCC File No. BLCDDT-20050621AAV



41 dBu Service contour

CERTIFICATE OF SERVICE

I, Deborah D. Williams, do hereby certify on this 25th day of February, 2013 that
a true and correct copy of the foregoing "Opposition" has been sent via U.S. mail,
postage prepaid to the following:


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